

Florida A&M University
Minutes of the Meeting of the Audit Committee
Wednesday, October 31, 2012

Trustee Karl White, Chairman, called the meeting to order at 12:00 p.m.

Members Present: Chairman Karl White, Trustee Torey Alston, Trustee Spurgeon McWilliams, Trustee Belinda Shannon, and Trustee Naryan Persaud

Others Present: Interim President Larry Robinson, Interim Vice President & Provost Rodner Wright, Vice President William Hudson, Vice President Thomas Haynes, Vice President K. Ken Redda, Vice President Richard Givens, Attorney Linda Barge-Miles, and Attorney Avery McKnight

Janet Snyder, Audit Investigation, Audit Committee, Roll Call:

Chairman Karl White, Trustee Torey Alston, Trustees Spurgeon McWilliams, Trustee Narayan Persaud, Trustee Belinda Shannon

Trustee Torey Alston represented Trustee White, with Trustee White being on the phone line. Trustee Alston asked for the review and approval of the committee minutes for the meeting of August 15, 2012. Trustees Solomon Badger made a motion to approve the minutes and it was seconded by Trustee Torey Alston. The motion carried.

Mr. Chairman, the Audit Committee has several items for information.

Informational Items Report: Richard Givens, Interim Vice President, Division of Audit and Compliance

Report on Audit of 800 Bed Residence Hall:

Background:

The University published an Invitation to Negotiate (ITN) to renovate Sampson and Young dormitories and construct a new 800 bed residence hall. The University wanted to complete construction of the 800 bed residence hall by July, 2013, so that it would be ready for occupancy by August, 2013. Opening the dormitories in the middle of an academic year is not practical, since most students would already have made living arrangements at the start of the academic year. We were informed that a design-build contract is usually the preferred contracting method under tight schedule circumstances, and it is intended to save time. A design build approach allows for construction of portions of the project immediately once the design is completed.

After going through the selection process, the University entered into a design-build agreement with Premier Construction & Development Inc. (Premier) for design-build services dated December 5, 2011. The design-build agreement provides that the budget for the project is set forth in exhibit A of the agreement, and that the design builder shall use its best efforts to design the project so that the GMP proposal does not exceed the budget for the work. The University's construction project budget was established in exhibit A of the agreement at \$34.6 million.

On June 28, 2012, Premier met with University representatives to communicate that the subcontractor bids were higher than anticipated and the construction cost was estimated at \$48 million. In response to the University's concerns over the cost increase, Premier was requested to provide an explanation for the cost increase of 37%. In correspondence dated, July 12, 2012, Premier provided contributing factors for the increase as well as four options as how to proceed with the project.

None of the options provided for completion of the project by July, 2013, at the budget of \$34.6 million. As a result of the substantial cost increase and inability to come to an acceptable agreement, the University recommended re-opening the bid for the completion of the work. The Board of Trustees (BOT) voted to terminate the contract with Premier and re-bid the contract.

The BOT also directed that an audit be conducted of the processes and events that led to this existing situation with the 800-bed residence hall project. The results of our audit are recorded below.

CONTRACTOR SELECTION:

Qualifications and Experience Requirement:

The ITN did not require that the contractor have experience in building similar types of structures. Requiring similar experience, e.g. building dormitories, classrooms, or laboratories, provides assurance that the contractor has the capability to meet the construction objectives.

Reference Checks:

The ITN did not require that reference checks be performed as part of the selection process. Performing reference checks is a good business practice and provides assurance that the prospective contractor has satisfactorily performed work in prior contracts. Our review disclosed that reference checks were not performed for any vendors.

FINANCING:

The University was delayed in securing funding for construction of the residence hall. Without financing, the University could not enter into a GMP Amendment to the contract for the total cost of construction. The University attempted to keep the project on schedule by executing limited scope GMP Amendments for portions of the construction, which were funded from existing University moneys. Because of the delay in funding for the project, bidding of the subcontracts was also delayed. The subcontract bids for the remainder of the construction work were received without execution of the GMP for the total construction cost. The subcontractor bids exceeded the \$34.6 million budget; however, the University did not have a GMP for the total construction cost nor did it have a performance bond to guarantee satisfactory completion of the work or protect the University from monetary loss. Typically, the final GMP is established prior to receipt of the subcontractor bids. If financing had not been delayed, the GMP for the total cost of construction cost would have been executed prior to receipt of contractor bids.

COST INCREASE:

Causes of Cost Increase:

As noted above, Premier was requested to explain why the project could not be built within the project budget. Premier provided a written Status Report for Bid/Cost Analysis and Solutions and Options dated July 12, 2012. Premier provided the following reasons for the cost increase:

<u>Contributing Factors to Cost Overruns</u>	<u>Dollar Increase</u>
Time, Overtime, and Liquidating Damages	\$2,500,000
Slow Project, Fast-track	\$850,000
Unforeseen: Poor soils	\$1,000,000
Uncertainty and Funding Delays	\$1,000,000
Recession Impacts	<u>\$1,500,000</u>
Total	<u>\$6,850,000</u>

The analysis provided explanations for \$6.85 million (approximately 50% of the cost increase). In a letter to the BOT dated August 27, 2012, Premier provided additional explanation relating to the cost increase. A review and analysis of Premier's explanations for the cost increase is given in the following paragraphs.

Time Compression, Overtime, and Liquidating Damages

Construction was anticipated to begin April 16, 2012 per the schedule provided by Premier. Through limited scope GMP Amendments, construction started in May 2012. Although there is a documented delay of 1 to 2 months, the time compression does not appear to be as severe as presented by Premier so that the overtime premiums do not appear to be fully justified.

Slow Project, Fast Track Project

Premier indicated that the project was awarded in 2009, fully executed December 5, 2011, with expectations of being fully funded in late February or March, 2012. This resulted in a compressed design process; design elements lingered referencing University wants, needs, or standards; little time to review, process, and course correct; and accelerated deliverables with each cost estimate based on previous design document submission. The time frame and budget of \$34.6 million were both established in the December 5, 2011, contract and agreed to by Premier; accordingly, they do not appear to be relevant to justifying a subsequent increase in cost. Although the University was delayed in securing permanent funding, partial funding was provided through the first three GMP Amendments in order to start construction.

In addition, the fast track resulted in not following the normal sequence of events. A contract for construction could not be executed because there was no available funding. In a normal process, the university would enter into the GMP Amendment establishing the GMP and requiring the contractor to post a performance bond prior to the contractor bidding the subcontract work.

Unforeseen Conditions: Poor Soils:

In correspondence dated April 6, 2012, Premier stated that foundation costs were higher than first estimated due to unsuitable soils encountered during the geotechnical investigations. It was further stated that, assuming that the foundation packages can be constructed in an overlapping parallel track in seventy calendar days, the current working estimate of the final total GMP is \$34,653,886. There was no communication of an increase in construction cost as a result of soil conditions at this time. Consequently, it appears that the additional cost resulting from poor soils was taken into account in the cost estimate submitted to the University in April, 2012.

Uncertainty and Funding Delays:

As described in Premier's explanation, the University entered into three separate GMP Amendments with Premier, resulting in work being performed piece-meal and that work was put on hold because of delays in securing funding. The contention that work was put on hold appears to be inconsistent with the execution of GMP Amendments so that the project did not appear to be significantly affected for the period the project was on hold.

Recession Impacts:

Recession impacts were estimated by Premier to be \$2.5 million. Premier indicated that many bidders reported other opportunities of similar scope and some chose not to bid this "challenging" project. At the same time the economic recession left numerous trade contractors weakened in human resources and limiting the number of bondable bidders. Our review disclosed that the contract provides that, at each phase of the design, the design/builder shall provide a report detailing construction issues and concerns relating to the design and shall provide availability of labor and other factors affecting construction. Since the recession began in 2006-07, it would appear that the effects of the recession should have been determined during the design phase when cost estimates were being done, well before opening of the bids. Additionally, the number of bidders appeared to be reduced from what would be expected. According to personnel of the University's Facilities and Planning Department, the number of bidders is significantly lower than normal for a project of this magnitude for the following reasons: many of the subcontractors that bid were affiliates of Premier Construction and Development, Inc., the construction time was modified, financing for the project was uncertain, the weak economy, and high liquidating damages.

Our review disclosed that oversight of the pre-construction work and the limited scope work was accomplished through regular meetings with Premier and periodic reports from Premier for certain milestones, which included working cost estimates. It is reasonable to expect that the contractor would be aware of increasing labor costs, since the cost estimates should be based on current conditions. Premier did not inform the University that the limited scope work was not sufficient to keep the project on schedule. Not until June, 2012, did Premier communicate in writing that the project could not be completed within the project budget.

Further, the architect on the project who provided the cost estimates was employed by Premier. The University had no independent verification of the cost estimates provided by Premier. Such verification could have provided assurance that the project was on schedule within budget or that there were potential problems.

SUMMARY:

Based on facts presented, we believe that Premier should have been aware of the potential cost increases before late June, 2012. From January through early June, 2012, Premier represented the working cost estimate as within the project budget and a completion date of July, 2013. In addition, it was the University's intention to avoid significant cost increases resulting from the time compression by starting limited scope work close to the scheduled start date of April 16, 2012. In January, 2012, Premier notified the University, of potential increases of \$500,000 per month from April through June for a total of \$1,500,000, if construction was not started by July 1, 2012. The University understood this was to compensate for delays in securing funding and for not starting construction by the anticipated start date of April 16, 2012.

In addition to the reasons provided by Premier, the price increase could have been caused by a number of factors such as:

- The cost of \$34.6 million was not attainable for the project designed
- Inaccurate cost estimates submitted in the reports from Premier. The agreement required that estimates be supported by a market analysis
- The subcontractor bidding process was flawed resulting in higher costs.

Recommendations:

For future design build projects, we recommend:

- Financing be secured for construction prior to preparing a solicitation for a project
- The University follow established design build procedures or document reasons for selecting a different process
- The selection criteria should include a requirement that the contractor have experience in building similar types of structures
- The GMP be finalized prior to obtaining final subcontractor bids
- An independent architect be retained to review the cost estimates prepared by the design/builder
- The project manager should have a closer relationship with the contractor on a daily basis

Update on the FDLE Investigation:

On September 12, 2012, the Florida Department of Law Enforcement (FDLE) provided Florida A&M University (University) with a summary of its investigation into potential fraud and/or misconduct associated with the University. The FDLE investigation focused on several different aspects of the financial operation of FAMU, including activities related to the FAMU Marching Band and the Purchase Card (P-Card) program. FDLE also reviewed past investigations conducted by the Division of Audit and Compliance. A summary of the conclusions from the FDLE investigation is as follows:

Marching Band Financial Review:

Several individuals who received per diem during travel were not registered students of the University. Trip attendees receiving per diem included elementary, middle, and high school students, and FAMU alumni. Other discrepancies included instances where students received per diem twice for one trip.

Response: The University has revised its group travel roster and implemented controls to ensure travelers are approved and receive appropriate per diem.

Purchase Card Review:

The University was unable to provide documentation or justification for several purchases and travel charges. There were numerous examples of cardholders failing to adhere to University policies and procedures. Instances of overpayment to travelers based on their travel reimbursement requests were noted. In addition, one individual consistently submitted false information on travel vouchers, and has been charged by the Office of the State Attorney with eight counts of falsifying a travel voucher.

Response: The University has revised the P-Card reconciliation report and lost receipt form, and held mandatory training for cardholders. The Travel Office and Controller's Office have instituted cross-referencing procedures to provide oversight of travel related charges, and has terminated the employee charged with falsifying travel vouchers.

Division of Audit and Compliance:

Although a majority of the complaints received by the Division between 2008 and 2011 were reviewed and resolved, several were not investigated. FDLE recommends that the Division review those ten complaints, investigate identifiable violations, and forward potentially criminal information to the appropriate law enforcement authorities.

Response: The Division of Audit and Compliance has reviewed the complaints identified and determined the next course of action, with the exception of one complaint that has not yet been forwarded to the Division by the Board of Governors.

Theft of Marching Band Dues:

The FDLE and FAMU Police Department investigations were unable to identify the individual responsible for the theft of the band funds. The FAMU Police Department indicated the incident was forwarded to the Division of Audit and Compliance, but no administrative review was done.

Response: The Division of Audit and Compliance forwards all suspected criminal activity to the FAMU Police Department. Procedures have been revised to ensure follow-up with the FAMU Police Department in order to obtain the outcome of their investigation and determine if any further action is warranted.

Band Staff Compensation:

The former Band Director was given the authority to negotiate contractual agreements relating to band performances for which he received payments which were deposited into his personal bank account. There were no internal controls or administrative oversight over the personal payments to the Band Director or his staff.

Response: The University now requires all contracts with external agencies to be approved by the Office of General Counsel and the University President or designee. All funds related to the band's performances will be deposited into the Marching Band Foundation account.

Implementation of Corrective Actions:

To provide assurance that corrective actions are implemented to resolve the issues raised related to travel and purchasing card usage, the University has engaged the firm of Ernst & Young to evaluate internal controls over the processes and identify improvements needed to prevent occurrence of the weaknesses noted in the FDLE report. This is to be a forward looking engagement to resolve the issues that have already been identified.

Update on the Ernst & Young Report:

The University contracted with Ernst & Young to re-perform eight audits/reviews identified in an investigation conducted by Sniffen & Spellman, P.A. Results of Ernst & Young's work for the audits/reviews were received by the University in a draft report dated, July, 2012. The final report was issued by Ernst & Young on October 25, 2012, with no significant changes. The findings were presented at the August, 2012, Board meeting. The University has adopted a corrective action plan to address all findings.

Audit Committee Training:

Ernst & Young has agreed to provide training to the audit committee on its roles and responsibilities. There was not sufficient time to hold the training, but it will be scheduled at the next audit committee meeting. The training is expected to take one to two hours.

Mr. Chairman, this concludes Audit and Compliance Report.

Questions and Answers:

The contract with Premier and what the University actually contracted for in December 2011 was discussed. In December, 2011, the contract was for the design-build services for the 800 Bed Residence Hall at the preconstruction contract price of about \$3 million. The preconstruction contract was part of the total design-build contract, which set the project budget at \$34.6 million. Under terms of the contract, the Contractor was to use its best efforts to design a building that could be built for \$34.6 million. It was not a hard fast price.

An ITN was issued in 2008 for the renovation of Sampson and Young and for the 800 Bed Residence Hall. Premier was selected in 2009. In the first part of the contract they renovated Sampson and Young Hall.

Inquiry was made as to whether the recommendations are being implemented in the current contract process. It was also requested that the management response to findings be included with the report.

The requirement that the Contractor had a similar experience was in the request for Bids. The other VP Givens wasn't sure about.

Discussion was held regarding determination of cost before going through the bid process. VP Givens indicated you actually secure funding before going to Bid. It maybe a little early to secure funding before going to a bid, but at some point, the project cost needs to be determined.

Inquiry was made as to what is involved in the bonding process for the State of Florida. Chairman White indicated that you do have to have worked within the bond process to know what the bond offering is. At some point we need to tighten up with the amount of time within that process, such that there is not significant delay between the awarding of the bid and the finances actually being secured. The specific language as written in that recommendation is properly not accurate and not practical.

Clarification was requested to explain the 6.8 million overage. VP Givens indicated that, based on the explanation provided by Premier, we don't feel like the project start date was far off from the projected start date. The University was to have it finished by July, 2013. The cost increases were not adequately justified by Premier.

It was indicated that the Trustees needed to know the parties responsible for this situation. We must become responsible and accountable for our actions.

The meeting was adjourned.